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FILING CAPTION: Reproductive Health Program rulemaking to establish the Abortion Access Plan

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RULES:

333-004-4000, 333-004-4010, 333-004-4020, 333-004-4030, 333-004-4040, 333-004-4050, 333-004-4060, 333-004-4070, 333-004-4080, 333-004-4090, 333-004-4100, 333-004-4110, 333-004-4120, 333-004-4130

ADOPT: 333-004-4000

RULE TITLE: Description of Abortion Access Plan

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4000: Describes the purpose of the rules.

RULE TEXT:

The purpose of OAR 333-004-4000 through 333-004-4130 is to establish requirements for the Abortion Access Plan under which authorized providers and agencies may receive reimbursement from the Oregon Health Authority for abortion services provided to individuals enrolled in health benefit plans described in ORS 743A.067(7)(e) and (9).

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4010

RULE TITLE: Definitions

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4010: Establishes the definitions used in the rules.

RULE TEXT:

As used in OAR 333-004-4000 through 333-004-4130, the following definitions apply:

- (1) "Abortion Access Plan" means the program, administered by the Reproductive Health Program (RH Program), under which authorized providers and agencies may bill and receive reimbursement for abortion services provided to eligible clients.
- (2) "Abortion services" means procedural abortions, medication abortions, anesthesia, and long-acting reversible contraceptive (LARC) insertions associated with abortion visits.
- (3) "Authorized agency" means an entity that has met the criteria outlined in OAR 333-004-4050.
- (4) "Authorized provider" means a provider who has met the criteria outlined in OAR 333-004-4050.
- (5) "Claims form" means the mechanism by which authorized providers bill the RH Program for abortion services provided to eligible clients.
- (6) "Eligible client" means a client who is enrolled in a health plan that excludes coverage for abortion services per ORS 743A.067(7)(e) and (9).
- (7) "Entity" means a business entity offering health care services that includes abortion services.
- (8) "Provider" means a health care provider licensed in the state in which they are practicing, with a scope of practice that includes the provision of the abortion services for which the provider is seeking reimbursement and who is qualified to perform the abortion services for which the provider is seeking reimbursement.
- (9) "Reproductive Health Program" or "RH Program" means the program within the Center for Prevention and Health Promotion (Center) of the Oregon Health Authority that administers the Abortion Access Plan.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4020

RULE TITLE: Covered Services

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4020: Defines the covered services under the Abortion Access Plan.

RULE TEXT:

The Abortion Access Plan covers abortion services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4030

RULE TITLE: Excluded Services

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4030: Defines the excluded services under the Abortion Access Plan.

RULE TEXT:

Services not listed as covered services in OAR 333-004-4020 are not covered by the Abortion Access Plan.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4040

RULE TITLE: Client Eligibility

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4040: Details the circumstances under which an individual may have their services covered by the Abortion Access Plan.

RULE TEXT:

To be eligible to have abortion services covered by the Abortion Access Plan, an individual must:

- (1) Be an eligible client; and
- (2) Have received services from an authorized agency or authorized provider that submits a claim for reimbursement using the RH Program-approved Abortion Access Plan claims form.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4050

RULE TITLE: Eligibility for Reimbursement

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4050: Describes the requirements that must be met in order to be considered an authorized agency or authorized provider for the purposes of receiving reimbursement for services covered by the Abortion Access Plan.

RULE TEXT:

(1) To be considered an authorized agency or authorized provider and certified to receive reimbursement for abortion services covered by the Abortion Access Plan for clients an entity or provider must:

(a) Be enrolled with the Oregon Health Authority, Health Systems Division and have met all requirements outlined in OAR 410-120-1260;

(b) Be certified with the RH Program as an AbortionCare agency per OAR 333-004-3030(3); or

(c) Have an active vendor account with the State of Oregon.

(2) An entity or provider will not be considered authorized if they have been suspended or terminated by Oregon from participation in a federal or state medical program administered by the State of Oregon, such as Medicare or Medicaid, or whose license to practice has been suspended or revoked by a state licensing board, except for those services or supplies provided prior to the date of suspension or termination.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4060

RULE TITLE: Abortion Access Plan Billing and Claims

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4060: Outlines the requirements for authorized agencies and authorized providers submitting claims to the Abortion Access Plan for reimbursement for abortion services provided to eligible clients.

RULE TEXT:

- (1) An authorized agency or authorized provider shall complete all required fields on the Abortion Access Plan claims form prior to submission to the RH Program.
- (2) An authorized agency or authorized provider must not seek payment from an eligible client, or from a financially responsible relative or representative of that eligible client, for any services covered by the Abortion Access Plan. The authorized agency or authorized provider shall accept reimbursement from the RH Program for any covered services as defined in OAR 333-004-4020 (Covered Services) as payment in full.
 - (a) An eligible client may be billed for services that are not covered by Abortion Access Plan, unless the authorized agency or provider misrepresented coverage of the service to the eligible client.
 - (b) Eligible clients must be informed by the authorized agency or authorized provider prior to their visit that they may be billed for services not covered by the Abortion Access Plan.
 - (c) Authorized agencies or authorized providers may not request a deposit from the eligible client in advance of services covered by the Abortion Access Plan.
- (3) By submitting a claim to the RH Program for payment, the authorized agency or authorized provider is certifying that the information is true, accurate, and complete.
 - (a) All billings must be for services provided within the agency's and provider's licensure or certification.
 - (b) A claim may not be submitted prior to providing services.
- (4) An authorized agency or authorized provider may not submit to the RH Program:
 - (a) Any false claim for payment.
 - (b) Any claim altered in such a way as to result in a payment for a service that has already been paid.
 - (c) Any claim upon which payment has already been made by the RH Program or another source unless the amount paid is clearly entered on the claim form.
 - (d) Any claim or written orders contrary to generally accepted standards of medical practice.
 - (e) Any claim for services that exceed what has been requested or agreed to by the eligible client or the responsible relative or guardian or requested by another medical practitioner.
 - (f) Any claim for services provided to persons who were not eligible.
 - (g) Any claim that overstate or misrepresent the level, amount or type of health care provided.
- (5) An agency or provider is required to correct the billing error or to refund the amount of the overpayment, on any claim where the agency or provider identifies an overpayment made by the RH Program.
- (6) No authorized agency or authorized provider shall submit claims that result in:
 - (a) Receiving payments for services provided to individuals who were not eligible; or
 - (b) Establishing multiple claims that overstate or misrepresent the level, amount, or type of health care provided.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4070

RULE TITLE: Timely Submission of Claims

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4070: Establishes a 12-month timely filing deadline for claims submission.

RULE TEXT:

- (1) Claims are processed once a month. To be included in a given month's processing, an authorized agency or authorized provider must submit a claim to the RH Program using the Abortion Access Plan claims form by electronic mail before the monthly processing deadline.
- (2) The RH Program shall pay claims within 12 months of the date of service. Claims submitted more than 12 months after the date of service shall be rejected.
- (3) Errors causing rejection of any claim must be resolved by the authorized agency or authorized provider within 12 months of the date of service. Claims older than 12 months submitted by the agency or provider to the RH Program shall not be paid, except when the RH Program has made an error that caused the agency or provider not to be able to bill within 12 months of the date of service. The error must be confirmed by the RH Program before the claim shall be paid.
- (4) Authorized agencies or authorized providers may void claims at any time after the date of service.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4080

RULE TITLE: Payment for Abortion Access Plan Claims

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4080: Describes the conditions under which the Reproductive Health Program will pay claims submitted to the Abortion Access Plan by authorized agencies and authorized providers.

RULE TEXT:

(1) The RH Program shall make payments to an authorized agency or authorized provider that actually performs the services for clients.

(2) Reimbursement rates for abortion services are set by the RH Program. Claims are reimbursed at the rates in effect on the date of service.

(3) The RH Program will not make payment on claims that have been assigned, sold, or otherwise transferred. This includes, but is not limited to, transfer to a collection agency or party who advances money to an agency for accounts receivable.

(4) The RH Program shall only pay for services that are adequately documented and for drug, device, and supply costs that are supported by invoice.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4090

RULE TITLE: Review or Audit of Abortion Access Plan Claims

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4090: Describes the review and audit procedures the Reproductive Health Program may follow for claims submitted to the Abortion Access Plan.

RULE TEXT:

(1) A RH Program staff person, contractor, or auditor may review a claim for assurance that:

(a) Specific medical services, drugs, devices, or supplies were provided to clients by an authorized agency or authorized provider in accordance with OAR 333-004-4040 (Client Eligibility); and

(b) The services, drugs, devices, or supplies were provided in accordance with Abortion Access Plan rules.

(2) To determine the number of inappropriate claims, and subsequently the overpayment amount, the RH Program may review a statistically valid random sample of claims with sufficient sample size for a confidence interval of 95 percent.

(3) The RH Program may deny payment or seek recovery of payment if a review or audit determines the visit does not include a covered services(s) referred to in OAR 333-004-4120 (Grounds for Sanctions; Sanctions).

(4) The RH Program shall notify the authorized agency or authorized provider, in writing, of the improper billing findings and subsequent actions to be taken by the authorized agency or authorized provider to correct the identified findings and any sanctions that may be imposed by the RH Program.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4100

RULE TITLE: Claim Re-Determination

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4100: Describes the process for an authorized agency or authorized provider to request a review for redetermination of a denied claim by the Abortion Access Plan.

RULE TEXT:

(1) If an authorized agency or authorized provider disagrees with an initial claim determination, it may request a review for re-determination of the denied claim payment. The request to open an initial claim determination for a re-determination review must be made to the RH Program in writing, within 60 calendar days from the date of the original claim adjudication date.

(2) All requests must contain a detailed letter of explanation identifying the specific re-determination denial issue and alleged error. This information must be submitted to the RH Program at the time of the request.

(3) At the time the request for re-determination is made an authorized agency or authorized provider is responsible for providing the information needed to adjudicate its claim, including relevant health records. The RH Program may request additional information that it finds relevant to the review. An authorized agency or authorized provider requesting a re-determination review must include the following:

(a) The specific service, supply or item being denied and a detailed justification for the re-determination of the denied service;

(b) A copy of the original claim and a copy of the original denial notice or remittance advice that describes the basis for the claim denial under re-determination; and

(c) Any information or medical documentation pertinent to support the request and to obtain a resolution of the re-determination review dispute.

(4) A re-determination review is based on RH Program review of documentation and applicable law. The RH Program does not provide a face-to-face meeting with an authorized agency or authorized provider as part of the re-determination process.

(a) The authorized agency or authorized provider is responsible for the timely submission of review request and all information pertinent to conducting the review and consistent with the requirements of this rule.

(b) The RH Program shall notify an authorized agency or authorized provider requesting review that the re-determination request has been denied if:

(A) The authorized agency or authorized provider did not submit a timely request;

(B) The required information is not provided at the same time the request is submitted; or

(C) The authorized agency or authorized provider fails to submit any additional requested information within 14 business days of request.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4110

RULE TITLE: Recovery of Abortion Access Plan Overpayments Resulting from Review or Audit

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4110: Describes the process for the recovery of Abortion Access Plan claims overpayments when the Reproductive Health Program determines an overpayment has been made to an authorized agency or authorized provider. Also describes the conditions under which an authorized agency or authorized provider may request a 100 percent audit of all billings after the Reproductive Health Program determines that an overpayment has been made.

RULE TEXT:

(1) When the RH Program determines that an overpayment has been made to an authorized agency or authorized provider, the amount of overpayment is subject to recovery.

(a) If the RH Program determines by the random sampling method set forth in OAR 333-004-4090 (Review or Audit of Abortion Access Plan Claims) that there has been an overpayment, an authorized agency or authorized provider may request a 100 percent audit of all billings submitted to the RH Program for abortion services provided during the period in question.

(b) If an authorized agency or authorized provider requests a 100 percent audit:

(A) The authorized agency or authorized provider is responsible for payment and arrangement; and

(B) The audit must be conducted by a certified public accountant who is knowledgeable with the Oregon Administrative Rules covering the payments in question and must be conducted within 60 calendar days of the request to use such audit in lieu of the RH Program's random sample.

(2) The amount of the review or audit overpayment to be recovered:

(a) Is the entire amount determined by the RH Program or the amount agreed to by the RH Program and the authorized agency or authorized provider;

(b) Is not limited to amounts determined by criminal or civil proceedings; and

(c) Includes interest charged at allowable state rates.

(3) The RH Program shall deliver to an authorized agency or authorized provider by registered or certified mail or in person a request for repayment of the overpayment and the documentation to support the overpayment amount.

(4) The overpayment is due and payable 30 calendar days from the date of the decision by the RH Program:

(a) An authorized agency or authorized provider may request an additional 30 calendar day grace period from the RH Program.

(b) A request for a hearing does not change the date the repayment of the overpayment is due.

(5) The RH Program may extend the reimbursement period for an authorized agency or authorized provider, or accept an offer of repayment terms from an authorized agency or authorized provider. Any change in reimbursement period or terms must be made in writing by the RH Program.

(6) If the authorized agency or authorized provider refuses to reimburse the overpayment or does not adhere to an agreed upon payment schedule, the RH Program may:

(a) Recoup future authorized agency or authorized provider payments up to the amount of the overpayment; or

(b) Pursue civil action to recover the overpayment.

(7) The RH Program may, at any time, change the amount of the overpayment upon receipt of additional information.

The RH Program shall notify an authorized agency or authorized provider in writing of any changes. Any monies paid to the RH Program by an authorized agency or authorized provider that exceed an overpayment shall be refunded to the agency.

(8) If an authorized agency or authorized provider is sanctioned for any reason, the RH Program may pursue civil action to recover any amounts due and payable to the RH Program.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4120

RULE TITLE: Grounds for Sanctions; Sanctions

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4120: Describes the circumstances and considerations in which the Reproductive Health Program may impose sanctions against an authorized agency or authorized provider. Lists the types of sanctions the Reproductive Health Program may impose.

RULE TEXT:

(1) The following may result in the imposition of a sanction against an authorized agency or authorized provider:

- (a) Interference with the investigation of health care fraud;
- (b) Conviction for unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;
- (c) An action by a state licensing authority relating to a provider's professional competence, professional conduct, or financial integrity, that results in the provider either:
 - (A) Having their license suspended or revoked; or
 - (B) Surrendering the license while a formal disciplinary proceeding was pending before a licensing authority.
- (d) Suspension or exclusion from participation in a federal or state-administered health care program for reasons related to professional competence, professional performance, or other reason;
- (e) Threatening, intimidating, or harassing clients or their relatives;
- (f) Participation in collusion that resulted in an inappropriate money flow between the parties involved, for example, referring clients unnecessarily to another provider;
- (g) Submittal of fraudulent claims;
- (h) Unauthorized or unlawful disclosure of client information; or
- (i) Failure to comply with OAR 333-004-4000 through 333-004-4130.

(2) The RH Program shall consider the following factors in determining whether to issue a sanction and the sanction to be imposed:

- (a) Nature of the violation or offense;
- (b) Extent of the violations;
- (c) History of prior violations;
- (d) Prior imposition of sanctions;
- (e) Cooperation with an investigation; and
- (f) Whether the action, sanction or exclusion was the result of a state having passed a law making abortion services unlawful.

(3) Sanctions may include one or more of the following:

- (a) A requirement that payment for certain services are made only after the RH Program has reviewed documentation supporting the services.
- (b) Prohibition from receiving payment for abortion services under the Abortion Access Plan in the future.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)

ADOPT: 333-004-4130

RULE TITLE: Requests for Reconsideration

NOTICE FILED DATE: 08/10/2023

RULE SUMMARY: Adopt 333-004-4130: Describes under which circumstances an authorized agency or authorized provider may request reconsideration of a Reproductive Health Program decision that adversely affects them and the process for doing so.

RULE TEXT:

- (1) An authorized agency or authorized provider may request reconsideration of a RH Program decision that directly adversely affects the agency or provider such as:
 - (a) A denial or limitation of payment allowed for services or items provided.
 - (b) A RH Program overpayment determination made under OAR 333-004-4110 (Recovery of RH Access Fund Overpayments Resulting from Review or Audit).
 - (c) A sanction.
- (2) An authorized agency or authorized provider may request reconsideration by filing a written request with the RH Program within 30 calendar days of the date the RH Program's decision was mailed. A request for reconsideration must:
 - (a) Provide a clear written expression from an agency or provider identifying the RH decision that is at issue.
 - (b) Explain the specific reason or reasons the authorized agency or authorized provider disagrees with that decision along with supporting documentation if applicable.
 - (c) Be received by the RH Program within 30 calendar days of the date the RH Program's decision was mailed in order to be considered timely.
- (3) If an authorized agency's or authorized provider's request for appeal is not timely, the authorized agency or authorized provider may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the authorized agency or authorized provider. The RH Program may require the request to be supported by a written statement that explains why the request for review is late.
- (4) A request for reconsideration will be reviewed by the Center for Prevention and Health Promotion (Center) administrator or designee. The administrator or designee may issue a decision on reconsideration based on the information submitted by the authorized agency or authorized provider or may request a meeting between the authorized agency or authorized provider and RH Program staff. If a meeting is requested the Center administrator or designee shall notify the authorized agency or authorized provider of the date, time, and place the meeting is scheduled. The meeting may be in person, by phone, or by video conference.
 - (a) The review meeting shall be conducted in the following manner:
 - (A) It shall be conducted by the Center administrator or designee;
 - (B) No minutes or transcript of the review will be made by the Authority;
 - (C) The authorized agency or authorized provider requesting the review need not be represented by counsel and shall be given ample opportunity to present relevant information; and
 - (D) RH Program staff may attend and participate in the review meeting but only the Center administrator or designee may ask the RH Program staff questions;
 - (b) An authorized agency's or authorized provider's failure to appear without good cause constitutes acceptance of the RH Program's determination;
 - (c) The Center administrator may combine similar administrative review proceedings, including the meeting, if the Center administrator determines that joint proceedings may facilitate the review; and
 - (d) The Center administrator or designee may request the authorized agency or authorized provider requesting reconsideration to submit, in writing, new information that has been presented orally. In such an instance, a specific date for receiving such information shall be established.
- (5) The decision on the request for reconsideration shall be sent to the authorized agency or authorized provider in writing, explaining the basis for the decision.

(6) The burden of presenting evidence to support a request for reconsideration is on the authorized agency or authorized provider.

STATUTORY/OTHER AUTHORITY: ORS 413.042, OL 2022, Ch. 435 (HB 4034, Section 10)

STATUTES/OTHER IMPLEMENTED: ORS 413.032, OL 2022, Ch. 435 (HB 4034, Section 10)